TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 286

THE UNITED STATES OF AMERICA, APPELLANT

vs.

MIDSTATE HORTICULTURAL COMPANY, INC., AND ARPAXAT SETRAKIAN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED AUGUST 19, 1938

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A [Caption omitted.]

B In United States District Court for the Eastern District of Pennsylvania

No. 7380. December Term, 1936

UNITED STATES OF AMERICA

vs.

MIDSTATE HORTICULTURAL COMPANY, INC., AND ARPAXAT SETRAKIAN

J. Cullen Ganey, Esq. S. L. Einhorn, Esq.

Docket entries

1937

Mar. 6—True Bill.
Mar. 17—Appearance of S. L. Einhorn, Esq., for defendants, filed.
Mar. 17—Order of Court fixing bail filed.
Mar. 30—Bond of Midstate Hort. Co., in $5,000, without surety filed.
Mar. 30—Bond of A. Setrakian in $5,000, with surety filed.
May 27—Motion for bill of particulars filed.
Nov. 10—Praecipe to place case on Argument List filed.
Dec. 7—Argued sur motion for bill of particulars.
Dec. 15—Order of Court granting motion for bill of particulars filed.

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Mar. 21—Bill of particulars filed.
Apr. 7—Demurrer filed.
May 19—Argued sur demurrer.
June 16—Opinion, Welsh, J., sustaining demurrer filed.
June 22—Order of Court sustaining demurrer and discharging defendants filed.
July 20—Petition for appeal to U. S. Supreme Court filed.
July 20—Order of Court allowing appeal filed.
July 20—Assignment of errors filed.
July 20—Citation allowed and issued.
July 20—Praecipe for transcript of records sur appeal filed.
July 20—Statement as to jurisdiction filed.

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July 26—Citation returned: "service accepted" and filed.
July 26—Notice to appellee and acknowledgment of service of copies filed.
Aug. 3—Statement of appellee against jurisdiction, Motion to dismiss appeal and Motion to affirm decision of this Court, filed.

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In United States District Court

No. 7380. December 1936 Sessions

UNITED STATES OF AMERICA

vs.

MIDSTATE HORTICULTURAL COMPANY, INC., AND ARPAXAT SETRAKIAN

Soliciting, accepting, and receiving rebates and concessions in respect of the transportation of property in interstate commerce

Indictment

Filed March 6, 1937

The Grand Jurors of the United States of America, empaneled and sworn, in the District Court of the United States for the Eastern District of Pennsylvania, at the Term thereof, in the year one thousand nine hundred and thirty-six, and inquiring for that district, upon their oaths and affirmations present:

COUNT 1

1. That at all times mentioned in this indictment Midstate Horticultural Company, Inc., hereinafter referred to as Midstate and as defendant, was, and is, a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business at Fresno in said State, and was engaged in the shipping of grapes over the railway lines of common carriers by railroad in interstate commerce, including the railway lines and joint through routes of the common carriers hereinafter mentioned in this count of this indictment; that at all times mentioned in this indictment Arpaxat Setrakian, hereinafter also called defendant, was an officer and agent of said Midstate, to wit, Vice President, Secretary, and General Manager.

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2. That at all times mentioned in this indictment The Pennsylvania Railroad Company was a common carrier engaged in the transportation of property in interstate commerce by railroad for hire, and, in conjunction with various other common carriers by railroad for hire more particularly specified in this and in the several remaining counts of this indictment, operated joint through routes over and by means of their respective connecting railway lines, for the transportation of property from certain points in the State of California, to wit, Quality, Fresno, and Conejo in the County of Fresno, through the Eastern District of Pennsylvania, to a point on the railway line of said The Pennsylvania Railroad Company, to wit, Manhattan Produce Yards in the State of New Jersey; and said common carriers, at all times mentioned in this indictment, were

subject to the provisions of an Act of Congress, approved February 4, 1887, entitled "An Act to Regulate Commerce," and to the Acts of Congress amendatory thereof and supplementary thereto.

3. That throughout the period from, to wit, October 1, 1932, to, to wit, December 31, 1932, said The Pennsylvania Railroad Company and said other common carriers more particularly specified in the next succeeding paragraph of this count of this indictment, had printed and had published and had filed with the Interstate Commerce Commission schedules and tariffs of rates and charges which named and showed the joint through rate and charge for the transportation, over their joint through route aforesaid from said Quality through the Eastern District of Pennsylvania to Manhattan Produce Yards aforesaid, of grapes in lug boxes with or without tops, in carload lots subject to a minimum carload weight of, to wit, 26,000 pounds, to be 173 cents for each 100 pounds thereof.

4. That on, to wit, October 15, 1932, Southern Pacific Com-
3 pany, Union Pacific Railroad Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, The Alton Railroad Company, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 4221; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

5. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $282.24, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT 2

1. The facts set forth in paragraph numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 15, 1932, Southern Pacific Company, Union Pacific Railroad Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, The Alton Railroad Company, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 27465; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit: $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and

5 cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $302.09, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT 3

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 17, 1932, Southern Pacific Company, Union Pacific Railroaod Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, The Alton Railroad Company, The Belt Railway Company of Chicago, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through

route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 15202; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The
7 Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $385.03, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States

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COUNT 4

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 17, 1932, Southern Pacific Company, Union Pacific Railroad Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, The Alton Railroad Company, The Belt Railway Company of Chicago, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 36867; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of,

to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive,

9 and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $385.23, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT 3

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 17, 1932, Southern Pacific Company, Union Pacific Railroad Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, The Alton Railroad Company, The Belt Railway Company of Chicago, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 32514; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive,

11 and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $384.23, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby the said property was transported from said Quality, through the

Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such made and provided and against the peace and dignity of the United States.

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COUNT 6

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 21, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Terminal Railroad Association of St. Louis, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 900 Lugs of grapes of an aggregate weight of, to wit, 26,100 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 19351; that on, to wit, November 2, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $451.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The

13 Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $479.25, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT 7

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 22, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Union Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Indiana Harbor Belt Railroad Company, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 38371; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc. and Arpaxat Setrakian, and
15 each of them unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $459.90, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT 4

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 23, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Union Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company,

Indiana Harbor Belt Railroad Company, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 109; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian,
17 and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $402.31, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT 9

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 24, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Union Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Indiana Harbor Belt Railroad Company, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 71433; that on, to wit, December 10, 1932, at said Manhattan

Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipments, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive,

19 and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $341.78, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT 10

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 24, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Terminal Railroad Association of St. Louis, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 900 lugs of grapes of an aggregate weight of, to wit, 26,100 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 33483; that on, to wit, November 2, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $451.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The

21 Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $325.35, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

22 COUNT 11

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 25, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Union Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Indiana Harbor Belt Railroad Company, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 15750; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and
23 each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $302.09, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs

of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT 12

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 26, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Union Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Indiana Harbor Belt Railroad Company, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 35385; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and

25 each of them unlawfully did knowingly solicit, accept and receive, and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $321.93, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT 13

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 27, 1932, Southern Pacific Company, Union Pacific Railroad Company, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 900 lugs of grapes of an aggregate weight of, to wit, 26,100 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 13763; that on, to wit, December 11, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $451.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The
27 Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $431.12, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

28 COUNT 14

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 27, 1932, Southern Pacific Company, Union Pacific Railroad Company, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 71674; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight

charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter, on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The
29 Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $350.60, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

30

COUNT 15

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 22, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Terminal Railroad Association of St. Louis, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 900 lugs of grapes of an aggregate weight of, to wit, 26,100 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 71860; that on, to wit, November 2, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $451.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc. and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received from said The
31 Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $387.90, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality,

through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

32 COUNT 16

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 28, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Indiana Harbor Belt Railroad Company, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 35349; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc. and Arpaxat Setrakian,
33 and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $321.93, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

34

COUNT 17

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 30, 1932, Southern Pacific Company, Union Pacific Railroad Company, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, and said The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 33508; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the

35 amount of, to wit, $321.93, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

36

COUNT 18

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That throughout the period from, to wit, October 1, 1932, to, to wit, December 31, 1932, said defendant and said other common carriers more particularly specified in the next succeeding paragraph of this count of this indictment, had printed and had published and had filed with the Interstate Commerce Commission schedules and tariffs of rates and charges which named and showed the joint through rate and charge for the transportation, over their joint through route aforesaid from said Fresno through the Eastern District of Pennsylvania to Manhattan Produce Yards aforesaid, of grapes in lug boxes

with or without tops, in carload lots subject to a minimum carload weight of, to wit, 26,000 pounds, to be 173 cents for each 100 pounds thereof.

3. That on, to wit, October 23, 1932, Southern Pacific Company, Union Pacific Railroad Company, Chicago Great Western Railroad Company, Indiana Harbor Belt Railroad Company, and said The Pennsylvania Railroad Compny, did transport from said Fresno, over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 32223; that on, to wit, November 1, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Com-
37 pany, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

4. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc. and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $474.50, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

38 COUNT 19

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 of Count 18 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 25, 1932, The Atchison, Topeka and Santa Fe Railway Company, Panhandle and Santa Fe Railway Company, and said The Pennsylvania Railroad Company, did transport from said Fresno over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and numbered SFRD 25366; that on, to wit,

November 3, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc. and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $474.30, in respect to the aforesaid transportation of
39 said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the Jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

40 COUNT 20

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 of Count 18 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 26, 1932, Southern Pacific Company, Union Pacific Railroad Company, Chicago Great Western Railroad Company, Indiana Harbor Belt Railroad Company, and said The Pennsylvania Railroad Company, did transport from said Fresno over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 15848; that on, to wit, November 3, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and

cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount
41 of, to wit, $474.30, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

42 COUNT 21

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 of Count 18 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 26, 1932, Southern Pacific Company, Union Pacific Railroad Company, Chicago Great Western Railroad Company, The Belt Railway Company of Chicago, and said The Pennsylvania Railroad Company did transport from said Fresno over their joint through route aforesaid to said Manhattan Produce Yards for said Midstate as consignor certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 33162; that on, to wit, December 9, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and
cause to be solicited, accepted, and received, from said The
43 Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $453.38, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

44

COUNT 22

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 of Count 18 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 27, 1932, Southern Pacific Company, Union Pacific Railroad Company, Chicago Great Western Railroad Company, Indiana Harbor Belt Railroad Company, and said The Pennsylvania Railroad Company, did transport from said Fresno over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 71993; that on, to wit, December 9, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter, on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept and receive, and cause to be solicited, accepted and received, from said The Pennsylvania Railroad Company, a rebate and concession in the

45 amount of, to wit, $495.23, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid: contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

46

COUNT 23

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 of Count 18 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 28, 1932, Southern Pacific Company, Union Pacific Railroad Company, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, and said The Pennsylvania Railroad Company, did transport from said Fresno over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930

lugs of grapes of an aggregate weight of, to wit, 26,040 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 38987; that on, to wit, December 11, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $450.49, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The
47 Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $453.38, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

48 COUNT 24

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 in Count 18 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 28, 1932, The Atchison, Topeka and Santa Fe Railway Company, Panhandle and Santa Fe Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, and said The Pennsylvania Railroad Company, did transport from said Fresno over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number SFRD 26301; that on, to wit, December 11, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc. and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The

49 Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $453.38, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

50

COUNT 25

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That throughout the period from, to wit, October 1, 1932, to, to wit, December 31, 1932, said The Pennsylvania Railroad Company and said other common carriers more particularly specified in the next succeeding paragraph of this count of this indictment, had printed and had published and had filed with the Interstate Commerce Commission schedules and tariffs of rates and charges which named and showed the joint through rate and charge for the transportation, over their joint through route aforesaid from said Conejo through the Eastern District of Pennsylvania to Manhattan Produce Yards aforesaid, of grapes in lug boxes with or without tops, in carload lots subject to a minimum carload weight of, to wit, 26,000 pounds, to be 173 cents for each 100 pounds thereof.

3. That on, to wit, October 27, 1932, The Atchison, Topeka and Santa Fe Railway Company, Panhandle and Santa Fe Railway Company, and said The Pennsylvania Railroad Company, did transport from said Conejo over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,040 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number SFRD 15793; that on, to wit, November 6, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The

51 Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $450.49, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

4. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $474.40, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Conejo, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

52 COUNT 26

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 of count 25 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 29, 1932, The Atchison, Topeka and Santa Fe Railway Company, Panhandle and Santa Fe Railway Company, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, and said The Pennsylvania Railroad Company, did transport from said Conejo over their joint route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number SFRD 18 559; that on, to wit, December 11, 1932, at said Manhattan Produce Yards, said The Pennsylvania Railroad Company, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said The Pennsylvania Railroad Company did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendants, Midstate Horticultural Company, Inc., and Arpaxat Setrakian, and each of them, unlawfully did knowingly solicit, accept, and receive, and cause to be solicited, accepted, and received, from said The Pennsylvania Railroad Company, a rebate and concession in the amount of, to wit, $453.38, in respect to the aforesaid transportation of
53 of said shipment of property by said common carriers, whereby said property was transported from said Conejo, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less

rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

(S) J. CULLEN GAINEY,
Acting United States Attorney.

PHILADELPHIA, PA., *March 5th, 1937.*

No. 7380. December Sessions, 1936. United States District Court, Eastern District of Pennsylvania. The United States of America vs. Midstate Horticultural Company, Inc., and Arpaxat Setrakian. True bill. H. R. Bassler, Foreman.

54 In United States District Court

[Title omitted.]

Motion for bill of particulars

Filed May 27, 1937

Now comes Arpaxat Setrakian and Midstate Horticultural Company, Inc., named as defendants in the indictment filed in the above proceedings, by their attorney, Samuel L. Einhorn, Esq., and move the Court for an order requiring the United States of America to furnish to said defendants within a time to be therein limited, a written bill of particulars of the matters embraced within the indictment as follows:

1. Set forth the Title, Chapter, Section, and Subdivision of the law, Statute or Act of the United States, which it is charged that each of the defendants violated, and upon which the indictment herein is founded.

2. Set forth the Titles, Numbers, Chapters, Sections, and Subdivisions of the Schedules and Tariffs of rates and charges in effect at the time in question, and filed with the Interstate Commerce Commission covering transportation by the Pennsylvania Railroad Company, and the other common carriers by railroad operating joint through routes with said Pennsylvania Railroad Company, over whose lines said shipment of grapes was carried, specifically indicating the tariffs and rates chargeable for the transportation of the shipments in question over the lines of each communicating carrier and the joint through rate and charge for each entire transportation, and

55 each and every manner in which the defendants departed from such rate.

3. Set forth the exact manner in which said shipments of the lugs of grapes contained in each car were transported by said common carriers, stating specifically the condition in which the lugs of grapes in each car were received, and their condition when delivered by the

carrier, and the damage, if any, to each shipment from the shipping point to point of destination.

4. Set forth the exact date, time, and place when and where it is charged that each of the defendants individually solicited, received, and accepted a rebate and concession from the Pennsylvania Railroad Company in connection with each shipment of grapes alleged in the indictment, together with the names of the persons acting on behalf of each defendant and from whom on behalf of the Pennsylvania Railroad Company said rebates and concessions were solicited, received, and accepted, stating whether the solicitation or solicitations charged to the defendants or either of them was written or oral; if written, set forth exact copies thereof with respect to each defendant; if oral, set forth the complete substance thereof with respect to each defendant.

5. Set forth each and every manner and form in which the alleged solicitation was effected, and the manner and form in which each alleged rebate and concession charged in the indictment was received and accepted by each of the defendants individually, stating specifically whether each of said alleged rebates and concessions was received pursuant to written or oral agreements; if written, set forth exact copies thereof; if oral, state the complete substance thereof, together with the time or times when and the place or places where it it is alleged said agreements were made as to each of the defendants and said rebates were received and accepted by each of the defendants, and the names of the persons acting on behalf of the respective parties.

56 6. State whether each alleged solicitation and the receipt and acceptance by the defendants of each rebate and concession charged in the indictment was made in connection with a claim for damage to each shipment or shipments, filed by the defendants or either of them, and the payment of such claim by the Pennsylvania Railroad Company or any of the other common carriers over whose lines said shipment or shipments was transported, specifying which of the defendants filed such claim or claims, and to which of said defendants said payment was made.

7. If it is charged that the said alleged rebates and concessions were made in connection with the filing of claims for damage by the defendants or either of them, then state in what manner, if any, such claim or the payments thereof were illegal or unlawful, and in what manner same constituted a rebate or concession or a solicitation of a rebate or concession, specifying which of the defendants filed the claim, and which of the defendants obtained the rebate.

8. If it is charged that the said alleged rebates and concessions were made in connection with the filing of claims by the defendants or either of them, state whether it is contended or claimed by the plaintiff that the payments of such claims were illegal or unjustified, and if so, in what manner or respect said payments were unjustified or illegal, and if it is claimed or contended that the payments of

such claims were in excess of the amount of damage suffered by the defendants or either of them, then set forth in detail the amount of damage suffered by the defendants or either of them and the excess, if any, paid by the Pennsylvania Railroad Company to the defendants or either of them in respect to each car mentioned in the said indictment.

57 9. State the exact date on which it is alleged that the defendants paid the freight charges on said transportation, stating specifically which of said defendants made the payment.

10. State whether the alleged rebate or rebates were paid by the Pennsylvania Railroad Company to the defendants or either of them in cash or by check; the exact date, time, and place when and where such payment or payments were made; if more than one payment, the respective amounts paid at the respective times and places; if by check or checks, the date or dates of such checks, the amount or amounts of such checks and the persons paying and receiving such payments and on whose behalf.

And for such other and further relief as to the Court shall seem meet.

Dated Philadelphia, Pa., May 26th, 1937.

Yours, &c.

(S) SAMUEL L. EINHORN,
Attorney for Defendants,
Office & P. O. Address 12 South Twelfth Street,
Philadelphia, Pennsylvania.

58 In United States District Court

[Title omitted.]

Affidavit of Arpaxat Setrakian

STATE OF NEW YORK,
City of New York, County of New York:

Arpaxat Setrakian being duly sworn, deposes and says: I am one of the parties defendant to the above entitled indictment and am also an officer of the Midstate Horticultural Company, Inc., which is also a party defendant. I declare and aver that I have made a complete statement of the facts to my attorney, Samuel L. Einhorn, Esq., and that he advises me on my statement of facts that I am not guilty of the crime or crimes with which I am charged, and I believe this to be true. That my attorney advises me that the indictment does not set forth clearly and distinctly the issues upon which the Government relies, and that the indictment speaks in language so general that he is unable to properly and adequately prepare my defense.

There are various charges declared in the indictment with which I am unfamiliar, and I declare under oath that I am ignorant of the acts and facts charged to me and to the corporate defendant. Since your deponent was general manager as well as officer of the

Midstate Horticultural Company, Inc., and is unfamiliar with the acts charged to both the corporate defendant and to myself, it is obvious that neither the corporate defendant nor I am in a position to make adequate preparation for the trial.

My attorney advises me that in none of the proposed demands is he asking for any evidence now in the Government's possession. That all of the particulars requested are limited to the issues involved in this transaction.

59 Wherefore, I respectfully pray that a bill of particulars be granted setting forth the various items as contained in the motion for a bill of particulars annexed hereto.

(s) ARPAXAT SETRAKIAN.

Sworn to before me this 26th day of May, 1937.

(s) IDA DAVIS HAUSER.

Commissioner of Deeds, N. Y. City,
N. Y. Co. Clk's No. 88, Reg. No. 81-18,
Kings Co. Clk's No. 58, Reg. No. 8008.

Term expires Jan. 28, 1938.

60 [Copy of indictment omitted. Printed side page. 1 ante.]

64 In United States District Court

[Title omitted.]

Order granting motion for bill of particulars

Filed December 15, 1937

And now, December 15th, 1937, after hearing counsel for plaintiff and defendants and due consideration had, it is

Ordered and decreed that the defendants in each of the above entitled cases be furnished with a Bill of Particulars.

By the Court.

WELSH, *J.*

65 In United States District Court

[Title omitted.]

Bill of particulars

Filed March 21, 1938

Now comes J. Cullen Ganey United States Attorney in and for the Eastern District of Pennsylvania, and in compliance with the order of this Honorable Court dated December 15, 1937, requiring the Government to furnish a bill of particulars with regard to certain matters alleged in the indictment herein, says:

(1. Question.) Where was the crime committed?

1. Answer. It is assumed that defendants desire to know where the check by which payment of all rebates alleged in the 26 counts of the indictment was handed by a representative of the Pennsylvania Rail-

road Company to a representative of the Midstate Horticultural Company, Inc., and therefore states that the check in payment of all the rebates alleged in the said 26 counts of the indictment was given by a representative of the said Railroad Company to A. Setrakian, Vice-President, Secretary, and General Manager of the Midstate
66 Horticultural Company in the City of New York, State of New York. All of which was stated at the bar of the Court by Francis Biddle, Esquire, counsel for the Pennsylvania Railroad Company.

(2. Question.) How was rebate paid?

2. Answer. Each of the rebates specified in the 26 counts of the indictment were included in one check in the amount of $10,826.46, dated May 15, 1935, and drawn by the Treasurer of the Pennsylvania Railroad Company to the order of Midstate Horticultural Company, Inc.

(3. Question.) Why was it a rebate?

3. Answer. The Government contends that the Pennsylvania Railroad Company paid the loss and damage claim or claims filed against each carload shipment of Midstate Horticultural Company, Inc., without carrier liability for the alleged loss and damage, and that these claims were filed by the said Midstate Horticultural Company, Inc. and paid by the Pennsylvania Railroad Company as a convenient method of soliciting and granting a rebate or rebates.

All other matters and questions set forth in defendants' motion for bill of particulars having been abandoned by counsel for the defendants at the bar of the Court, no further answer is being made.

J. CULLEN GANEY,
United States Attorney.

67 In United States District Court

[Title omitted.]

Demurrer

Filed April 7, 1938

And now, to wit, April 6th, 1938, comes Midstate Horticultural Company, Inc. and Arpaxat Setrakian, defendants in the above entitled cause, by their attorney, Samuel L. Einhorn, Esq., and demur to the indictment returned against them in the above numbered and entitled cause, and for grounds for their demurrer to said indictment say:

1. The said indictment and the matters therein contained in manner and form as the same are therein stated are not sufficient in law, and the defendants are not bound by the law of the land to answer the same. This they are ready to verify.

2. The indictment does not allege any facts which constitute an offense against the laws of the United States.

3. The indictment does not allege any facts which give this court jurisdiction over defendants in this matter; in that it is alleged in Counts 1 to 26 inclusive of the indictment, that on May 15,
68 1935, defendants did knowingly solicit, accept, and receive and cause to be solicited, accepted, and received from the Pennsylvania Railroad Company certain rebates in respect to the transportation of certain shipments, but it is not stated in the indictment that the rebate was received within the jurisdiction of this court, or in what jurisdiction payment was received, and it further appears in all of the Counts of the Indictment that the transportation of the various shipments had terminated more than two years prior to the date of receipt of payment of the alleged rebate.

Wherefore for want of sufficient indictment, defendants pray judgment on each and every Count of the indictment and that the same may be quashed.

(S) SAMUEL L. EINHORN,
Attorney for Defendants.

69 In United States District Court, Eastern District of Pennsylvania

No. 7380. December Sessions, 1936

UNITED STATES OF AMERICA

vs.

MIDSTATE HORTICULTURAL COMPANY, INC., AND ARPAXAT SETRAKIAN

No. 7382. December Sessions, 1936

UNITED STATES OF AMERICA

vs.

THE PENNSYLVANIA RAILROAD COMPANY

Opinion sur demurrers to indictments

Filed June 16, 1938

70 WELSH, J.: The question is solely one of jurisdiction as to whether or not this is the proper district in which the case should be tried. The Act (49 U. S. C. A., Sec. 41) provides, in part, as follows:

"Every violation of this section shall be prosecuted in any Court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted. * * *"

71 In Section 1 of the above referred to Act, the crime is defined as follows:

"Every person or corporation whether carrier or shipper, who shall knowingly offer, grant, or give, or solicit, accept, or receive, any such

rebate, concession, or discrimination, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $1,000 nor more than $20,000."

72 This is an indictment for rebates alleged to have been given by the Pennsylvania Railroad Company, hereinafter referred to as the Railroad, to Midstate Horticultural Company, Inc., the shipper, hereinafter referred to as Midstate. The Government filed two indictments growing out of these transactions, one against the railroad and one jointly against Midstate and Arpaxat Setrakian. The shipment covered grapes and they were shipped from various points in the West to New York. Thereafter, by reason of damage to the shipment, it became necessary for the grapes to be sold. It is alleged by the railroad that the check subsequently given to Arpaxat Setrakian was an adjustment of this loss incurred by the shippers. It is proper to mention that the full lawful rates were paid for the transportation of the various shipments, all of which terminated more than two years prior to the date of payment of the alleged rebate.

73 In an argument before the Court on the question of where the crime took place and the nature of the rebate, the Court ordered that a bill of particulars be filed. In reply thereto, the United States filed a bill of particulars stating that * * * "the check was in effect given by the Pennsylvania Railroad Company to Mr. Setrakian in the City of New York, New York * * *"

74 Both sides to this controversy have filed very illuminating briefs and the case argued most ably by counsel. The briefs quite extensively cite leading cases on the subject of rebates and there is, undoubtedly, some conflict of authority between the decisions of the lower courts. This Court, however, is of the opinion that our construction of the case hinges entirely on the question of jurisdiction.

If any violation of the law occurred as alleged, the case should be tried in New York. The Court is of the opinion that under all of the facts, jurisdiction is not in this Court, and, so holding, the demurrers are sustained.

75 In United States District Court for the Eastern District of Pennsylvania

No. 7380. December Sessions, 1936

UNITED STATES OF AMERICA

vs.

MIDSTATE HORTICULTURAL COMPANY, INC., AND ARPAXAT SETRAKIAN

Order sustaining demurrer etc.

Filed June 22, 1938

And now, to wit: this 21st day of June A. D. 1938, it is ordered that the Demurrer to the Indictment in the above entitled cause be

and the same is hereby sustained and defendants discharged without day.

By the Court.

(S) WELCH, *J.*

76 In United States District Court for the Eastern District of Pennsylvania

[Title omitted.]

Petition for appeal

Filed July 20, 1938

United States of America, plaintiff, by its counsel, now comes and says that on June 21, 1938, this court rendered its judgment in favor of the defendants against the plaintiff, in which judgment and proceedings had prior thereto in said cause certain errors were committed to the prejudice of the plaintiff, all of which more fully appear from the assignment of errors herewith filed.

Wherefore, United States of America prays that an appeal may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in said cause, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

(S) J. CULLEN GAINEY,
United States Attorney.

Dated this 20th day of July, 1938.

(S) EDWARD A. KALLICK,
Assistant U. S. Attorney.

77 In United States District Court

[Title omitted.]

Order allowing appeal

Filed July 20, 1938

United States of America, plaintiff, having by its counsel made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment of this Court rendered June 21, 1938, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided:

It is ordered and adjudged that the appeal be and the same is hereby allowed as prayed and made returnable within forty (40) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings,

and papers on which said final judgment was made and entered to the Supreme Court of the United States.

This 20th day of July 1938.

(S.) W. H. KIRKPATRICK,
United States District Judge.

78 In United States District Court

[Title omitted.]

Assignment of errors

Filed July 20, 1938

United States of America, plaintiff, by its counsel, now comes and, in connection with its petition for an appeal, files the following assignment of errors upon which it will rely in its appeal to the Supreme Court of the United States from the judgment rendered by this Court on June 21, 1938.

The District Court erred:

1. In sustaining the demurrer to the indictment.
2. In not overruling the demurrer to the indictment.
3. In holding and adjudging that jurisdiction of the offenses charged in the indictment does not lie in the United States District Court for the Eastern District of Pennsylvania.
4. In failing to construe Section 1 of the Elkins Act (49 U. S. C. A. Section 41), the statute upon which the indictment is founded, as fixing jurisdiction of the offenses charged in the indictment in the United States District Court for the Eastern District of Pennsylvania.
5. In holding and adjudging that jurisdiction of the offenses charged in the indictment lies solely in the United States District Court for the Southern District of New York.
6. In entering the order sustaining the demurrer of the indictment.

(Sgd.) J. CULLEN GANEY,
United States Attorney.
(Sgd.) EDWARD A. KALICK,
Ass't U. S. Attorney.

Dated this — day of July 1938.

Service of a copy of the foregoing assignment of errors is hereby acknowledged this — day of July 1938.

———— ————,
Attorney for defendant.

79 [Citation in usual form showing service on Samuel L. Eirhorn, filed July 26, 1938, omitted in printing.]

80 In United States District Court

[Title omitted.]

Praecipe for transcript of record

Filed July 20, 1938

To the CLERK OF THE DISTRICT COURT:

Please transmit as the transcript of record in the above entitled case, the following pleadings, documents, and records to the Supreme Court of the United States:

1. Indictment.
2. Motion for bill of particulars.
3. Order granting motion for bill of particulars.
5. Bill of particulars.
6. Demurrer to indictment.
7. Opinion of the court sustaining the demurrer.
8. Order on opinion sustaining the demurrer.
9. Petition for appeal.
10. Assignment of errors.
11. Statement as to jurisdiction.
12. Order allowing appeal.
13. Notice of service on appellee of petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.
14. Citation on appeal.
15. All docket entries in their proper order.
16. Praecipe for transcript of record.
17. Clerk's Certificate.

(S) J. CULLEN GANZY,
United States Attorney.
(S) EDWARD A. KALLICK,
Assistant U. S. Attorney.

81 [Clerk's certificate to foregoing transcript omitted in printing.]

82 Supreme Court of the United States

Statement of points and designation of record to be printed

Filed August 23, 1938

I

United States of America, appellant, states that in its brief and oral argument on its appeal in the above-entitled cause it will rely upon the points stated in its assignment of errors therein.

II

The entire record in this cause as filed in this Court is necessary for consideration of the points stated by appellant, and the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court.

ROBERT H. JACKSON,
Solicitor General.

AUGUST 19TH, 1938.

Service of a copy of the above Statement of Points and Designation of Record to be Printed acknowledged August 19th, 1938.

WALTER SCHACHTEL,
For Einhorn & Schachtel, Counsel for Appellees.

[File endorsement omitted.]

[Endorsement on cover:] File No. 42,771. E. Pennsylvania D. C. U. S. Term No. 286. The United States of America, Appellant, vs. Midstate Horticultural Company, Inc., and Arpaxat Setrakian. Filed August 19, 1938. Term No. 286 O. T. 1938.

U. S. GOVERNMENT PRINTING OFFICE